(4)

No. 90-408

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

COUNTY OF YAKIMA and DALE A. GRAY,
YAKIMA COUNTY TREASURER,
Petitioners,

v.

CONFEDERATED TRIBES and
BANDS OF THE YAKIMA NATION,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF FOR LA PLATA COUNTY, COLORADO; BANNOCK COUNTY, LEWIS COUNTY AND POWER COUNTY, IDAHO; MAHNOMEN COUNTY, MINNESOTA; BLAINE COUNTY, FLATHEAD COUNTY, GLACIER COUNTY, LAKE COUNTY AND ROOSEVELT COUNTY, MONTANA; THURSTON COUNTY, NEBRASKA; SIOUX COUNTY, NORTH DAKOTA; CHARLES MIX COUNTY, CORSON COUNTY, DEWEY COUNTY AND TODD COUNTY, SOUTH DAKOTA; DUCHESNE COUNTY, UTAH; AND FREMONT COUNTY, WYOMING, AS AMICI CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

TOM D. TOBIN *
TOBIN LAW OFFICES, P.C.
422 Main Street
Winner, South Dakota 57580
(605) 842-2500
* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-408

COUNTY OF YAKIMA and DALE A. GRAY,
YAKIMA COUNTY TREASURER,
Petitioners,

v.

CONFEDERATED TRIBES and
BANDS OF THE YAKIMA NATION,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF FOR LA PLATA COUNTY, COLORADO; BANNOCK COUNTY, LEWIS COUNTY AND POWER COUNTY, IDAHO; MAHNOMEN COUNTY, MINNESOTA; BLAINE COUNTY, FLATHEAD COUNTY, GLACIER COUNTY, LAKE COUNTY AND ROOSEVELT COUNTY, MONTANA; THURSTON COUNTY, NEBRASKA; SIOUX COUNTY, NORTH DAKOTA; CHARLES MIX COUNTY, CORSON COUNTY, DEWEY COUNTY AND TODD COUNTY, SOUTH DAKOTA; DUCHESNE COUNTY, UTAH; AND FREMONT COUNTY, WYOMING, AS AMICI CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

INTEREST OF AMICI CURIAE

This Brief is filed in support of the petition for a writ of certiorari, with the expectation that respondent will challenge the validity of the taxes in question in a cross-petition. We disagree with respondent on the merits, but agree that the cross-petition should also be granted.

The concern that prompts the filing of this Brief can be simply stated. Since 1987 tribal governments across the country, with the assistance and encouragement of the United States, have challenged the validity of county ad valorem taxes on Indian fee lands. Almost without exception, the tribal arguments are loosely premised on bits and scraps of language from several unrelated opinions of this Court in the 1970's. The court of appeals correctly rejected the tribal arguments, but erroneously construed *Brendale* v. *Confederated Tribes & Bands of Yakima Indian Nation*, 109 S. Ct. 2994 (1989), to require a case by case analysis of tribal interests. As a result, this *Brendale* remand promises, in the interim, that more members of other tribes will refuse to pay their taxes (everywhere), that more tax abatement petitions will be filed (La Plata County, Colorado), that more lawsuits will be filed against counties in State courts (Corson County, South Dakota), that more tribal lawsuits will be filed against counties in federal court (two in Montana), and even worse, that the United States will, as it did just four months ago, *after* the decision below, designate other *Amici* or other counties similarly situated (and there are many), and sue those counties and their States in federal court in the name of the United States (Todd County, South Dakota). (Federal complaint with attachments; one inch thick, burdensome interrogatories and requests for production of documents). Apart from the fact that county governments can ill afford to squander scarce resources on senseless litigation, the issue here threatens the very core of county fiscal integrity.

The Counties joining in this Brief all contain areas that at one time were established as Indian Reservations. They are representative of many other counties similarly situated throughout the United States. As this Court has often noted, fee lands are scattered throughout the counties, some of which are owned by Indians and Indian Tribes. The history of each area is, of course, as varied and diverse as federal Indian policy—with one exception. Historically, every county has routinely taxed these fee lands and this practice has been the accepted rule for decades.

To be sure, the extent of Indian fee ownership varies from reservation to reservation and reflects radically different fact situations. As *Amici* States note, the precise amount of lands nationally has not been determined. Locally, tribal enrollment lists are not ordinarily available to county governments and even these lists do not include non-member Indians, who also own fee property. So we are not certain of the total sum involved. One thing, however, is certain. The amount is substantial—because these counties also contain large areas of other lands that are non-taxable and held in trust by the United States for Indians and Indian tribes. For example, in Todd County, South Dakota, approximately 60 percent of the entire county is held in trust by the United States for the Rosebud Sioux Tribe or its members or other Indians. Of the taxable land, Indian fee land on paper roughly constitutes more than 10 percent of the seven hundred and fifty thousand ($750,000) to eight hundred and fifty thousand ($850,000) dollars of total taxes collected by the county per year in recent years. In Dewey County, South Dakota, the same figure represents roughly 8 percent of the total taxes collected. In other counties the percentage could be more and in some counties it is undoubtedly less. But this is beside the point. Whatever the amount, county government in these areas is not some new and novel experience. It has been there for decades pursuant to Congressional

Policy. That Congressional Policy has authorized the taxes here—and not on a case by case basis as the court of appeals has indicated.

Importantly, county government simply cannot afford to litigate for years to find out whether other courts will agree or disagree with the court of appeals on the merits, even if this Court summarily rejects the *Brendale* remand. The issue in this case represents a fundamental and most basic concept in Federal Indian Law that has been resolved and relied on for decades. For this reason, *Amici* respectfully submit that this Court grant the petitions and authoritatively document and set forth that concept in this case.

In the process, perhaps the Solicitor General should be invited to express the views of the United States. Although the United States did not participate below except as *Amicus* in support of the tribal petition for rehearing and suggestion for rehearing *en banc*, at that time the United States told the court of appeals "The issue is of great importance to Indians on reservations throughout the United States. . . . The broad importance of the decision to reservation Indians makes this case an appropriate candidate for a rehearing, including reconsideration *en banc*. . . ." Memorandum for the United States at 1-2. And the Secretary of the Interior has publicly stated that this issue "cries out for clarification" and the sooner it ends up in the Supreme Court, the better. *Amici* App. 52a-53a. *Amici* agree.

On the merits, the United States also told the court of appeals that to tax Indiar fee lands would "create an exception, without any policy basis, from the general rule that the state may not tax Indians or their property on reservations." Memorandum for the United States at 2. What the United States did not tell the court of appeals, *Amici* would submit, is even more significant. Time and time again, for almost a century the United States has told everyone else, including this Court, a different story.

SUMMARY OF ARGUMENT

Petitioner and *Amici Curiae* States have set forth in detail the reasons the court of appeals misconstrued *Brendale*, and while we agree with those important points, they are not repeated here.

The argument of *Amici Curiae* Counties centers around the fundamental validity of the taxes in question and the support for that position in the legislative history of the General Allotment Act and in the manner in which the United States and this Court have consistently construed this most important legislation.

ARGUMENT

I. CONGRESSIONAL DOCUMENTATION.

Perhaps no other area of Federal Indian Law has been better understood than the taxing of Indian fee lands authorized by Congress in the General Allotment Act of 1887 (24 Stat. 388). In the beginning, even the general public was involved in the debate on the fundamental aspects of the question presented. Meetings were held, memorials passed, and Congress was inundated with the pros and cons of the allotment policy. When first introduced in 1881, the Senate debated the overall issue day after day. In subsequent years, the debate continued, bills passed the Senate, were stalled in the House, and in 1887 the measure finally passed. Some of this legislative history was recently submitted to this Court by the United States in *United States* v. *Mitchell*, 445 U.S. 536 (1980). A more complete index is set forth in *Amici* App. 1a-2a. The General Allotment Act documents cited there are replete with evidence that Congress clearly intended, after the expiration of twenty-five year trust, that Indian fee lands would be taxed as all other fee lands. For example, in 1881, the first provision that incorporated this concept stated:

> That the lands acquired by any Indian under and by virtue of this act shall not be subject to alienation,

> lease, or incumbrance, either by voluntary conveyance or by the judgment, order or decree of any court, or subject to taxation of any character, but shall be and remain inalienable, and not subject to taxation, lien, or incumbrance, for the period of twenty-five years from the date of the patent, which said restrictions shall be incorporated in the patents when issued. 11 Cong. Rec. 875 (1881). *Amici* App. 3a.

When Senator Dawes introduced the language of the present section in related legislation, he stated "The Indian, therefore, under the law will be to all intents and purposes the occupant of the land and enjoy all its uses and at the end of the twenty-five years the United States will be obliged by the force of this provision to give him or his heirs a patent discharged of the trust and free of incumbrance. It will be impossible to raise the question of taxation under that provision . . . 13 Cong. Rec. 3211 (1882).

It was clear, as Senator Coke stated in the same debate, that "Section 5 prohibits the alienation of land by the Indians; it exempts the land from taxation, from lien or incumbrance *for twenty-five years.*" 11 Cong. Rec. 876-877 (1881) (emphasis added). And thereafter, the record is replete with similar statements. "Mr. Dawes. . . . The bill protects the property of the Indians for twenty-five years. *That is the limit.* That is the intent of the bill." 15 Cong. Rec. 2242 (1884) (emphasis added). Other representative statements to this same effect are set forth in *Amici* App. 3a-10a.

When Congress amended this provision for unrelated reasons in the Burke Act in 1906 (34 Stat. 182), this understanding was reflected in the text of the Act, as Petitioner and *Amici* States have discussed at length. It is also reflected in the legislative history set forth verbatim in *Amici* App. 11a-51a.

II. ADMINISTRATIVE INTERPRETATION.

Immediately after the passage of the 1887 Act, the Secretary of the Interior requested and received an opinion from the Attorney General of the United States. Among other things, this opinion clearly ties the tax exemption to the twenty-five year trust period.

> I am also of opinion that the allotment lands provided for in the act of 1887 are exempt from State or Territorial taxation upon the ground above stated with reference to the act of 1884, namely, that the lands covered by the act are held *by the United States for the period of twenty-five years in trust for the Indians*, such trust being an agency for the exercise of a Federal power, and therefore outside the province of State or Territorial authority.

19 Op. Atty Gen. 161, 169 (1888) (emphasis added). Later, opinions from the Department of the Interior reenforced this accepted construction. 30 L.D. 258, 266-267 (1900), 50 L.D. 591 (1924), 53 L.D. 107 (1930), 53 L.D. 133 (1930). With specific reference to the Yakima Indian Reservation, in 1930 the Interior Solicitor characterized the issue as follows:

> The United States thus retained its hold on the lands allotted for a period of 25 years after the allotment and as much longer as the President in his discretion might determine, and the *clearly expressed* intent of Congress is that *so long as* the land remains in *that* status it is beyond the power of the State to tax the same for any purpose.

53 L.D. 107 (1930) (emphasis added).

This construction of the 1887 Act is repeatedly reflected in every related opinion of the Department of the Interior thereafter until 1989. On April 21, 1989, the 1979 opinion that restated this position was simply rescinded. After citing several cases decided by this Court in the 1970's, an Associate Solicitor of the Department of the Interior reasoned that:

> [L]anguage in some of those decisions suggests the state is on weaker ground when it attempts to tax Indian ownership of land. . . .

Memorandum at 1, BIA. IA. 0943, April 21, 1989. (This Court briefly reviewed some of these same decisions in *Duro* v. *Reina*, 110 S.Ct. 2053 (1990). In contrast to the broad characterization of the Associate Solicitor, *Duro* particularly described the exemption noted there as extending to only "certain taxes on transactions of tribal members. . ." *Duro*, 110 S.Ct. at 2060.) On balance, the prior Interior opinions are entitled to more weight than the 1989 Memorandum. *See*, e.g., *Duro*, 110 S.Ct. at 2063. Other historical sources confirm this position.

For example, F.E. Leupp, the Commissioner of Indian Affairs at the time of the 1906 Burke Act also viewed the restrictions on taxation as tied to the trust status of the land. In his 1910 text, Commissioner Luepp summarized the administration of the General Allotment Act from his perspective and discussed the taxation issue in the context of fee lands. Leupp, *The Indian And His Problem*, 34, 47, 64, 75 (1910). (Also, *see Amici* App. 41a, 45a, where the recommendations of Commissioner Luepp are contained in the House and Senate Reports on the Burke Act.)

James McLaughlin worked for fifty-two years, 1871-1923, in the Indian service. As an inspector in the Department of the Interior, he had more experience in dealing with the General Allotment Act than any other individual of his time. In 1910, he summarized this experience in the following words:

> In the process of civilization, they had arrived at a stage of their progress when, as part of the usual policy, they were given their lands in severalty. To each individual was allotted one hundred and sixty acres of land, the title to which was to be held in trust by the government for twenty-five years and

> then patented in fee to the allottee. The allotted lands were to be free of taxes *during* the trust period.

McLaughlin, *My Friend the Indian*, 106 (1910) (emphasis added). *See* Pfaller, *James McLaughlin, The Man With the Indian Heart*, xi, 331-332 (1978).

III. THE UNITED STATES AND THIS COURT.

Although this Court generally discussed the General Allotment Act in *Draper* v. *United States*, 140 U.S. 240 (1896), it was not until 1903 that a tax related issue reached this Court in *United States* v. *Rickert*, 403 U.S. 432 (1903). There, the United States correctly headed its argument with the proposition that "the lands of the Indian allottees are not taxable under the authority of the State *during* the trust period" and concluded that improvements were similarly "exempt from taxation *during* the trust period that the land is so exempt, such improvements being in legal contemplation land". Brief for the United States at 15, 42, *Rickert*, *supra* (emphasis added). The *Rickert* opinion reflects this representation:

> no power in the State of South Dakota, for state or municipal purposes, to assess and tax the lands in question *until* at least the fee was conveyed to the Indians. . . . *While* the title to the land remained in the United States, the permanent improvements, could no more be sold for local taxes than could the land to which they belonged.

Rickert, 403 U.S. at 437, 442 (emphasis added).

A few years later, in *Goudy* v. *Meath*, 203 U.S. 146, (1906), a related issue was generally discussed and decisively resolved. The *Goudy* argument, addressed in detail by others, need not be repeated here.[1]

In 1943, in a most instructive case that involved a special modification of the twenty-five year trust limita-

---

[1] *See*, e.g., *Choteau v. Burnet*, 283 U.S. 691 (1930).

tion of the General Allotment Act, the United States recounted to this Court that the General Allotment Act "has been *uniformly construed* as conferring upon the Indians a vested 25-year tax exemption. . . ." and the United States conceded that subsequent to that period, the land was legally taxable. Brief for the United States, at 17, 43, *Mahnomen County* v. *United States*, 319 U.S. 474 (1943) (emphasis added). The *Mahnomen* decision reflects this important concession in no uncertain terms:

> It is *conceded* that any limitation on the County's power to tax *expired* in 1928 with the termination of the twenty-five year trust described below.

Mahnomen, 319 U.S. at 475 (emphasis added).[2]

In 1956, in an income tax case that involved the General Allotment Act, as amended by the Burke Act of 1906, *supra*, the United States succinctly stated that:

> this provision was undoubtedly intended *to make it clear* that Indian lands transferred *in fee* to the Indians would *thereafter* be subject to state and local taxation. . . .

Brief for the Petitioner, note 4 at 13, *Squire* v. *Capoeman*, 351 U.S. 1, 13, n.4 (1956) (emphasis added). The opinion of the Court accepted the basic premise of the argument:

> The Government argues that this amendment was directed solely at permitting state and local taxation *after a transfer in fee*, but there is no indication in the legislative history of the amendment that it was to be so limited. . . . The literal language of the proviso evinces a congressional intent to subject an Indian allotment to *all taxes only after a patent in fee* is issued to the allottee.

Squire, 351 U.S. at 7-8 (emphasis added).

---

[2] Most of the important early cases of this Court are discussed in detail in the Brief for the United States, *Mahnomen*, *supra*. Also, *see Nichols v. Rysavy*, 809 F.2d 1317 (8th Cir. 1987), *cert. denied*, 484 U.S. 848 (1987), and *County of Thurston v. Andrus*, 586 F.2d 1212 (8th Cir. 1978), *cert. denied*, 441 U.S. 952 (1979).

In 1973, in *United States* v. *Mason*, 412 U.S. 391 (1973), the United States noted that the Court in *Squire*:

> relied on language in an amendment to the General Allotment Act providing for *taxation of the land after the allottee receives a patent in fee* . . . [and] held that an amendment to the General Allotment Act created a tax exemption by implication, and that it required the return of the trust property without encumbrances at the end of the trust period . . . *and provided for taxation after the termination of the trust.*

Brief for the United States, at 9-10, 17, *Mason*, *supra* (emphasis added). The Court in *Mason* agreed:

> Moreover, the *Squire* decision rested heavily on the provision in the General Allotment Act providing for the removal of 'all restrictions as to sale, encumbrance, or taxation' *when Indian property is granted in fee*. . . .

Mason, 412 U.S. at 396 (emphasis added). Even Mr. Hobbs, arguing for the tribal respondents in oral argument, stated:

> The next thing that happens is that in 1906 Congress amends the General Allotment Act, and it says that—for the first time adds the idea that the trust period can end sooner than the 25 years intended if the Indian becomes competent sooner than that time. And it says that after he reaches the point of competency, the trust will end and he gets his land, and all restrictions as to alienation and *taxation are lifted.* This implies that Congress thought that the land was free of tax up to that point and well so. Over sixty years ago this Supreme Court, in 1903, had held that a restriction on alienation added up to a tax exemption. So, Congress assumed on very good authority in 1906 that the restriction on alienation was the equivalent of a tax exemption.

Tr. of Oral Argument, at 38, *United States* v. *Mason*, 412 U.S. 391 (1978) (emphasis added).

Most recently, in *United States* v. *Mitchell*, 445 U.S. 536 (1980), the United States reviewed the entire history of the General Allotment Act. Again, the United States told this Court the exemption to state taxation coincided with the trust period:

> The General Allotment Act . . . for the limited purposes of (a) restraining improvident alienation of the land by the allottees and (b) affording an immunity from state taxation for the period *during* which the legal title remained in the United States. . . .

Brief for the United States at 24, *Mitchell*, *supra* (emphasis added). In oral argument, Mr. Claiborne, arguing for the United States, said the same thing:

> That statute contemplated a scheme whereby the land of the reservation would be divided among the Indians within 25 years, and in the *meantime*, the United States was simply to hold title in trust solely for the purpose of preventing state taxation, it being legal title in the United States and therefore exempt from state taxation.

Tr. of Oral Argument, at 14, *United States* v. *Mitchell*, 445 U.S. 536 (1980). (emphasis added). This Court agreed:

> [W]hen Congress enacted the General Allotment Act, it intended . . . to prevent alienation of the land and to ensure that allottees would be immune from state taxation.

Mitchell, 445 U.S. at 544. At the end of this conclusion, the Court quoted at length and added emphasis to the remarks of Representative Skinner, the sponsor in the House of Representatives: ". . . 'land *is made inalienable and non-taxable for a sufficient length of times.*' . . ." *Mitchell*, 445 U.S. at 544, n.5 (emphasis as in original except for a sufficient length of time). In dissenting, Justice White described the holding of the Court in the same terms:

> The Court holds, however, that the 'trust' established by § 5 is not a trust as that term is commonly understood, and that Congress had no intention of imposing full fiduciary obligations on the United States. Congress' purposes, it is said, were narrower: to impose a restraint on alienation by Indian allottees while ensuring *immunity from state taxation during the period* of the restraint.

Mitchell, 445 U.S. at 546, 547 (White, J., dissenting) (emphasis added). It is significant that the arguments the United States submitted in *Mitchell* were presented subsequent to the decisions of this Court that the United States now advances to undermine the same position.

CONCLUSION

For the foregoing reasons, the petition and the cross-petition should be granted and a writ of certiorari issued to the United States Court of Appeals for the Ninth Circuit. Summary disposition is not appropriate under the circumstances, unless that disposition specifically confirms that the Court of Appeals was generally correct in it's views, except as to *Brendale*. Apart from *Brendale*, the subsidiary question of the validity of the taxes is an important question of federal law which should be settled by this Court at this time.

Respectfully submitted,

TOM D. TOBIN *
TOBIN LAW OFFICES, P.C.
422 Main Street
Winner, South Dakota 57580
(605) 842-2500
* Counsel of Record

October 9, 1990

APPENDIX

APPENDIX

INDEX TO LEGISLATIVE HISTORY OF THE GENERAL ALLOTMENT ACT

The General Allotment Act or Dawes Act can be traced back to 1880 when similar bills were debated in the Senate, beginning with S. 1773, 48th Cong., 2nd Sess. (1880). That bill was reported in the Senate at 10 Cong. Rec. 3507. Then in the 48th Cong., 3d Sess. (1881), S. 1773 was considered and amended. See 11 Cong. Rec. 761, 778-788, 873-882, 904-913, 933-943, 994-1003, 1026-1038, 1060-1070, 1211, 1096, and 1253.

In 1882, a similar bill, S. 1445, 47th Cong., 1st Sess. (1882), was introduced in the Senate as a replacement for Senate bills 19 and 931. See 13 Cong. Rec. 1824. That bill was amended and passed the Senate. See 13 Cong. Rec. 3212.

S. 48, 48th Cong., 1st Sess. (1883) was introduced next and referred to the Senate Committee on Indian Affairs. See 15 Cong. Rec. 13. It was reported back with amendments in 1884. See 15 Cong. Rec. 877. It was then debated, amended, and passed. See 15 Cong. Rec. 2240-2242, 2277-2280. In the 48th Cong. 2nd Sess. (1884), S. 48 was referred to the House Committee on Indian Affairs. See 16 Cong. Rec. 218. It was then reported back with accompanying House Report 2247 (H.R. 2247, 48th Cong., 2nd Sess. (1884) Serial Set # 2328 Vol. 1). See 16 Cong. Rec. 580.

In 1885, S. 54, 48th Cong., 1st Sess. (1885) was introduced and referred to the Senate Committee on Indian Affairs. See 17 Cong. Rec. 123. It was reported back in 1886, see 17 Cong. Rec. 841, and was then debated, amended, and passed in the Senate. See 17 Cong. Rec. 1558, 1630-1635, 1674, 1719, 1762-1764. It was then referred to the House Committee on Indian Affairs, see 17 Cong. Rec. 1959, and reported back with House Report

1835. (H.R. 1835, 48th Cong., 1st Sess. Serial Set # 2440 Vol. 8). See 17 Cong. Rec. 3841.

S. 54 was then debated in the 49th Cong., 2nd Sess. as well. See 18 Cong. Rec. 189, 224-225. It was amended and passed the House, see 18 Cong. Rec. 226, and then referred to the Senate Committee on Indian Affairs. See 18 Cong. Rec. 247, 313. The bill was then returned to the House. See 18 Cong. Rec. 273, 285, 315. The Senate non-concurred in the House amendments, see 18 Cong. Rec. 476, and a conference was then appointed. See 18 Cong. Rec. 478, 534, 580. A conference report was made, debated, and agreed to. See 18 Cong. Rec. 772, 882, 972. The bill was then examined and signed, see 18 Cong. Rec. 1048, 1054, and approved by the President. See 18 Cong. Rec. 1577 (1887).

In 1906, the Burke Act was signed, amending section 6 of the Dawes Act of 1887. The Burke Act began as House Resolution 11946, 58th Cong., 1st Sess., and was first referred to the House Committee on Indian Affairs. See 40 Cong. Rec. 1110. It was reported back with amendments, accompanied by House Report 1556, (H.R. 1558, 59th Cong., 1st Sess. Serial Set # 4941 vol. 1). See 40 Cong. Rec. 2812. The bill was then debated, amended, and passed in the House. See 40 Cong. Rec. 3598, 3602. It was then referred to the Senate Committee on Indian Affairs, see 40 Cong. Rec. 3688, and was reported back with amendments and Senate Report 1998. (S.R. 1998, 59th Cong., 1st Sess. Serial Set # 4904 vol. 1). See 40 Cong. Rec. 4153. The bill was passed over, see 40 Cong. Rec. 5189, 5605, and was then debated, amended, and passed in the Senate. See 40 Cong. Rec. 5805. The House concurred in the Senate amendments. See 40 Cong. Rec. 5980. It was examined and signed, see 40 Cong. Rec. 6089, 6100, 6233, and was approved by the President. See 40 Cong. Rec. 7795.

EXCERPTS FROM THE LEGISLATIVE HISTORY OF THE GENERAL ALLOTMENT ACT OF 1887

Mr. COKE. In section 5 of this bill it is provided:

That the lands acquired by any Indian under and by virtue of this act shall not be subject to alienation, lease, or incumbrance, either by voluntary conveyance or by the judgment, order or decree of any court, or subject to taxation of any character, but shall be and remain inalienable, and not subject to taxation, lien, or incumbrance, for the period of twenty-five years from the date of the patent, which said restrictions shall be incorporated in the patents when issued.

If the Senator's amendment prevails, will not that provision be rendered nugatory?

Mr. HOAR. I do not understand it so. . . .

11 Cong. Rec. 875(1881).

Mr. COKE. . . . Section 5 prohibits the alienation of land by the Indians; it exempts the land from taxation, from lien or incumbrance for twenty-five years. . . .

11 Cong. Rec. 876-877 (1881).

Mr. COKE. . . . In the first place, his lands are exempt from judgment and from execution, are exempt from taxation, which those of no citizen are. . . .

11 Cong Rec. 877 (1881)

Mr. COKE. . . . There is an exemption here from taxation. There is a prohibition against alienation. One is a privilege and the other a burden. They are put there for the benefit and protection of the Indian. . . .

11 Cong. Rec. 878 (1881)

Mr. BROWN. . . . It is true you exempt his land from taxes by this bill for a certain length of time. . . .

11 Cong. Rec. 880 (1881).

Mr. BROWN. . . . I trust, Mr. President, that we shall pass this bill in a shape that will give every Indian a home on his reservation, and guarantee it to him and his children for all time to come, and that the power of alienation will be restricted until he has learned the rights and the duties of an American citizen. After that let him and his posterity take care of it or alienate it as may any one else. Fix a reasonable time; exempt their homesteads from taxation. After that time there is no further exclusion in the fourteenth constitutional amendment in the way of counting them in the representative population of the States where they may reside, and no reason that I can see why they may not be full-fledged citizens and voters.

11 Cong. Rec. 882 (1881).

Mr. CALL. . . . But the bill cautiously and carefully proceeds with a preliminary period, a probationary period of twenty-five years, which shall be a period of preparation for them before their ownership of land shall be complete. . . .

11 Cong. Rec. 908 (1881).

Mr. PLUMB. . . . If that position of the bill which provides that these lands shall not be alienated and shall not be subject to taxation for a period of twenty-five years and shall not be leased until the same period shall pass, you will find about your doors here from year to year an increasingly tumult from the communities in which you have set these people, exempt from the burdens of the Government and occupying lands which they cannot cultivate—a tumult which you cannot prevent and the consequences of which you cannot avoid.

11 Cong. Rec. 942 (1881).

Mr. TELLER. . . . It is provided in the sixth line of the sixth section "that their lands shall not be subject to taxation or execution upon the judgment, order, or decree

of any court." That ought to be qualified so that they shall not be subject to taxation, judgment, &c., for a period of twenty-five years, because that will make it in harmony with the rest of the bill. . . .

11 Cong. Rec. 997 (1881).

Mr. DAWES. The matter which is involved in the lines on the third page, beginning with the proviso in the fifty-fourth line of section 1, has been discussed several times in the Senate; and to obviate all question about it, to reach precisely what is sought for in that proviso and at the same time avoid any question about the right of the State to tax this land so held by an Indian in severalty, I have prepared a substitute for the proviso, which I have shown to several members—not all, for I have not had time—of the Committee on Indian Affairs, and which I think will commend itself to the Senate. Therefore I move to strike out that proviso and insert what I send to the desk.

The ACTING SECRETARY. It is proposed to strike out, after the word "act," in line 54 of section 1, the following proviso:

Provided, That the title to lands acquired by Indians under the provisions of this act shall not be subject to alienation or incumbrance, either by voluntary conveyance or by the judgment, decree, or this order of any court, but shall be and remain inalienable and not subject to taxation, lien, or incumbrance for any purpose for a period of ten years from the date of patent, and until such time thereafter as the President may see fit to remove the restriction, which conditions shall be expressed in the patent.

And in lieu thereof to insert:

Which shall be of the legal effect, and declare that the United States does and will hold this land thus alloted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment

shall have been made; or, in case of his decease, of his heirs, according to the laws of the State of Oregon, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs, as aforesaid, in fee, discharge of said trust and free of all charge or incumbrance whatsoever.

Mr. DAWES. That, in short, Mr. President, provides that the United States shall hold the title itself to this particular severalty, but in trust for the sole use and benefit of each Indian getting his land in severalty. The Indian, therefore, under the law will be to all intents and purposes the occupant of the land and enjoy all its use, and at the end of twenty-five years the United States will be obliged by the force of this provision to give him or his heirs a patent discharged of the trust and free of incumbrance. It will be impossible to raise the question of taxation under that provision, and that will secure to the Indian his rights in severalty precisely as the other provision would.

The amendment was agreed to.

13 Cong. Rec. 3211 (1982). (Umatilla Allotment Act.)

Mr. DAWES. I offer the same amendment which I offered to the bill that has just passed, to strike out the proviso on the fifth page, beginning at the third line of the fifth section, down to and including the eleventh line, and insert:

Which shall be of the legal effect, and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs aforesaid in fee discharged of said trust and free of all charge or incumbrance whatsoever.

Mr. COKE. While I do not see the necessity of that amendment, I cannot perceive that it will do any harm, and am willing, as far as I am concerned, to accept it.

13 Cong. Rec. 3212 (1882).

Mr. CONGER. Before the bill goes over I wish to call the attention of the committee to one point to be considered before to-morrow morning. There is nothing said in the bill in regard to the taxation of this property. This alienable property of the Indians is distributed in all States and Territories where the lands lie, and there is an uncertainty in regard to the right of the State or Territory to tax the property. I think some provisions of that kind is worthy of the consideration of the committee.

Mr. DAWES. The bill protects the property of the Indians for twenty-five years. That is the limit. That is the intent of the bill.

Mr. CONGER. It does not say so in terms.

Mr. DAWES. It says so in absolute legal effect, because the United States is to hold the title. The title in fee remains in the United States for tweny-five years.

Mr. CONGER. But it is not to be inalienable for twenty-five years. I merely call attention to it. It seems to me there should be some provision by which this property could all be saved to the Indians and saved to them from any attempt at taxation.

15 Cong. Rec. 2242 (1884).

Mr. DOLPH. . . . We propose now to allot lands to them in severalty, and to make such lands inalienable for twenty-five years, and it is supposed that at the end of twenty-five years they will become capable of taking care of themselves. . . .

15 Cong. Rec. 2277 (1884).

Mr. COKE. . . . After providing that the patent shall be issued and shall convey the land in fee discharged of trusts at the end of twenty-five years, it reads:

Provided, That the President may withhold the issuance of the patent in fee in any case for such further time as he may deem to be for the interests of the Indians. And the trust created in the original patent shall be and remain in full force until the patent in fee be issued.

If the condition of affairs exists at the expiration of twenty-five years feared by the Senator from California, here is ample discretion reserved to the President of the United States to apply the proper remedy, and that is to withhold the patents. I think that is an abundant answer to the objection the Senator has made.

15 Cong. Rec. 2278-2279 (1884).

Mr. DAWES. . . . But as to the individual allotments the term is fixed at twenty-five years. It is fixed for several reasons. One is that the holding of land by the United States so that it can not be taxed in any community, for any unnecessary period of time, is irksome and unwise, unless there be some good reason for it. The allotment patent which is to issue after twenty-five years is only to issue to such Indians as in the opinion of the Interior Department are so far advanced in the outset as to give hope and encouragement that by this process they will be self-supporting at the end of twenty-five years from that time and be able to stand upon their own feet. I know the Senator would desire that the moment an Indian, like any white man, is able to take care of himself he should be free to dispose of his property like any white man. . . .

Mr. COKE. . . . The President must find these facts recited in this section of the bill to be true before he can put the machinery of this bill in motion. Then he must get the consent of two-thirds of each tribe before it operates upon that tribe. Then when the lands are surveyed patents are issued promising a fee-simple title to the Indians at the end of twenty-five years. At the expiration of that time, if there are any conditions surrounding the Indians which make it in the judgment of

the President improper that they should have the fee-simple title to the land, the President is authorized to withhold patents for an indefinite time. . . .

15 Cong. Rec. 2279 (1884).

Mr. DAWES. . . . Under a subsequent part of the bill the United States is to give him a patent, by which the United States covenants to hold for him for twenty-five years in trust this particular 160 acres, and at the end of twenty-five years to give him or his heirs a patent in fee.

17 Cong. Rec. 1630 (1886).

Mr. SKINNER. . . . Or shall he be converted into a civilized tax-payer, contributing toward the support of the Government and adding to the material prosperity of the country? . . . in addition thereto, his land is made inalienable and non-taxable for a sufficient length of time for the new citizen to become accustomed to his new life, to learn his rights as a citizen, and prepare himself to cope on an equal footing with any white man. . . .

17 Cong. Rec. 190 (1886).

Mr. PERKINS. . . . It has the warm indorsement and approval of the Secretary of the Interior, of the Commissioner of Indian Affairs, and of all those who have given attention to the subject of the education, the Christianization, and the development of the Indian race. . . . The bill provides for the breaking up, as rapidly as possible, of all the tribal organizations and for the allotment of lands to the Indians in severalty, in order that they may possess them individually and proceed to qualify themselves for the duties and responsibilities of citizenship. . . .

For that reason, as I have suggested, it meets the warm approval of all the Government officers whose duties bring them in close contract with the Indians, and it has also the indorsement of the Indian rights associations throughout the country, and of the best sentiment of the land. . . .

18 Cong. Rec. 191 (1887).

Mr. DOLPH. . . . Do I understand that the changes made by the House amendments and the conference committee permit a lien or disposition of lands that shall be allotted to Indians in severalty after the lapse of a less period than that provided in the bill as passed by the Senate—twenty-five years? Also, do I understand that the provision inserted in the bill in the Senate——

Mr. DAWES. Will the Senator put his first interrogatory again?

Mr. DOLPH. My question is whether such changes have been made in the bill that instead of the bill as it passed the Senate providing that the land which shall be allotted to Indians in severalty can only be disposed of or be subject to liens after a period of twenty-five years, it now allows that to be done after five years?

Mr. DAWES. No, that has not been changed, except in this way, that the President may, in his discretion in any particular case, extend the time after the twenty-five years. The time limiting the power of alienation is not reduced at all, but has this further extension in the discretion of the President as to any particular case.

Mr. DOLPH. According to the conference report, when are patents to issue to the individual Indians?

Mr. DAWES. If the Senator will get the bill he will see. As soon as the individual Indian takes up his allotment he is to have a patent which shall be of the legal effect that the United States holds in trust this particular tract of land for the sole use and benefit of the particular Indian for the period of twenty-five years, at the end of which time the United States is to give him a patent in fee of the land; and then to that is added a provision that in any particular case the President may extend that twenty-five years' limit so that the United States shall in that particular case hold the land in trust for the Indian a further time.

18 Cong. Rec. 973 (1887).

FIFTY-NINTH CONGRESS

SESS. 1. CH. 2348 1906

[182] CHAP. 2348.—An Act To amend section six of an Act approved February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an Act approved February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," be amended to read as follows:

"SEC. 6. That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made and who has received a patent in fee simple under the provisions of this Act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized

life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such [183] Indian to tribal or other property: *Provided*, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: *Provided further*, That until the issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States: *And provided further*, That the provisions of this Act shall not extend to any Indians in the Indian Territory."

That hereafter when an allotment of land is made to any Indian, and any such Indian dies before the expiration of the trust period, said allotment shall be cancelled and the land shall revert to the United States, and the Secretary of the Interior shall ascertain the legal heirs of such Indians, and shall cause to be issued to said heirs and in their names, a patent in fee simple for said land, or he may cause the land to be sold as provided by law and issue a patent therefor to the purchaser or purchasers, and pay the net proceeds to the heirs, or their legal representatives, of such deceased Indian. The action of the Secretary of the Interior in determining the legal heirs of any deceased Indian, as provided herein, shall in all respects be conclusive and final.

Approved, May 8, 1906.

CONGRESSIONAL RECORD INDEX

H.R. 11946

H.R. 11946—

To amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."

Mr. Burke of South Dakota; Committee on Indian Affairs 1110.—Reported back with amendment (H.R. REPORT 558) 2812.—Debated, amended, and passed House 3598, 3602.—Referred to Senate Committees on Indian Affairs 3668.—Reported back with amendments (S. REPORT 1998) 4153.—Passed over 5189, 5605.—Debated, amended, and passed Senate 5805.—House concurs in Senate amendments 5980.—Examined and signed 6089, 6100, 6233.—Approved by President 7795.

CONGRESSIONAL RECORD—HOUSE

JANUARY 15

* * * *

[1110] By Mr. BURKE of South Dakota: A bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"—to the Committee on Indian Affairs.

* * * *

FEBRUARY 21

[2812] Mr. BURKE of South Dakota, from the Committee on Indian Affairs, to which was referred the bill

of the House (H. R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," reported the same with amendment, accompanied by a report (No. 1558); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

* * * *

MARCH 9

ALLOTMENT OF LANDS TO INDIANS

[3598] Mr. BURKE of South Dakota. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," which I send to the desk and ask to have read.

The Clerk read as follows:

Be it enacted, etc., That section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," be amended to read as follows:

"SEC. 6. That at the expiration of twenty-five years or thereafter, if the period has been extended by the President, and when the lands have been conveyed to the Indians by patent in fee, as provided in section 5 of this act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Terri- [3599] tory to which they may reside;

and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made and who has received a patent in fee simple under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up with said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property: *Provided*, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs, at any time cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed."

With the following amendments:

Page 1, line 6, strike out "twenty-five years or."

Page 2, line 1, strike out "thereafter, if the period has been extended by the President."

Page 2, line 2, before the word "and" insert "the trust period."

At the end of the bill add: "*Provided further*, That until the issuance of fee simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States."

The SPEAKER. Is there objection?

Mr. FINLEY. Mr. Speaker, I reserve the right to object.

Mr. STEPHENS of Texas. Mr. Speaker, I desire to ask the gentleman from South Dakota if the Committee on Indian Affairs has reported this bill; and if not, what committee did it come from?

Mr. BURKE of South Dakota. Mr. Speaker, I desire to say that the Committee on Indian Affairs has made a unanimous report on this bill, and it has the favorable report of the Department. It provides, first, to change the present Indian allotment law, so that an Indian when he takes an allotment does not become a citizen until he gets a fee simple patent. It also provides that the Secretary of the Interior may grant a fee simple patent when, after investigation, he becomes satisfied that the Indian has reached such a state of advancement and civilization that he is capable of managing his own affairs, and the gentleman from Texas ([Mr. STEPHENS] will recall that yesterday this matter was discussed in explanation of why there were so many of these individual cases in the Indian appropriation bill. The practice of the committee has been to put in such cases as might be recommended by the Department, and only such cases, and my recollection is that this provision was in one or more appropriation bills and passed the House at the last session, but that it went out in the Senate.

Mr. STEPHENS of Texas. Is the gentleman aware of the fact that the present Secretary of the Interior is holding up numerous applications for patents at the present time and is not issuing them, no demands having been made, and the allotees are entitled to them, and does he not think this might result in indefinitely preventing these people from becoming citizens of the State in which they live if the bill is passed?

Mr. BURKE of South Dakota. I think not, Mr. Speaker; and as I indicated to the gentleman yesterday, I think the original allotment law did not contemplate

that citizenship would go with the mere allotment of land. Of course this bill will not affect the status of any Indian allottee who has taken an allotment prior to this time.

Mr. STEPHENS of Texas. The gentleman will admit it affects his citizenship. He can not become a citizen until the Secretary of the Interior will permit him to become a citizen by issuing to him a patent.

Mr. BURKE of South Dakota. It does not affect the status as to citizenship of Indians who have taken allotments previous to the time when this becomes a law.

Mr. STEPHENS of Texas. Then what reason have you that this should become law?

Mr. BURKE of South Dakota. For this reason: Take it in my State, for instance, the Indians that have not yet received allotments and to whom allotments are now being made are the Indians in the remote portions and reservations that are commonly known as "blanket Indians," and they do not possess one single qualification entitling them to citizenship, and yet it is desirable that the lands be allotted to them. If citizenship goes with allotment, then I do not think there will be any allotment to any such Indians in the future.

Mr. FITZGERALD. I would like to make an inquiry. This bill, if I understand it correctly, makes two changes in the present law. First, it gives to the Secretary of the Interior power to issue patents, regardless of the twenty-five-year restriction, whenever he deems it proper.

Mr. BURKE of South Dakota. Yes, sir.

Mr. FITZGERALD. And, secondly, it changes the law so that the mere allotment of land to an Indian does not confer citizenship upon him.

Mr. BURKE of South Dakota. It leaves him subject only to the jurisdiction of the United States until he gets his fee simple patent.

Mr. FITZGERALD. Are those the only two changes?

Mr. BURKE of South Dakota. Those are the only changes.

Mr. CRUMPACKER. Under the law as it now stands the Secretary of the Interior does not have authority to issue fee simple patents to Indians whom he may conclude are entitled to them?

Mr. BURKE of South Dakota. That is true.

Mr. CRUMPACKER. And if this bill should become a law Congress would still have the power to issue patents in special cases notwithstanding the authority conferred upon the Secretary of the Interior.

Mr. BURKE of South Dakota. Congress would certainly have that power.

Mr. CRUMPACKER. I observed in the Indian appropriation bill that was up for consideration yesterday a number of pages of authority granted to the Secretary of the Interior to issue patents to numerous Indians. Those provisions occupied several pages in the bill, and it struck me that this kind of a law ought to be enacted in order to avoid the necessity of Congressional action in relation to these several cases. I suppose the recommendation of the Committee on Indian Affairs is guided almost entirely by the recommendations of the Interior Department?

Mr. BURKE of South Dakota. Entirely so; and all such provisions as appear in the Indian appropriation bill might go out on a point of order. Now I yield to the gentleman from Wyoming.

Mr. MONDELL. Mr. Speaker, I just came into the House and did not hear the discussion on the bill. As I understand it, at the present time all Indian patents are issued with a non-alienation clause, and that for the time within which the lands are not alienable the Indians, under this bill, would not become citizens.

Mr. BURKE of South Dakota. Not Indians who may take allotments after the passage of this act. It does not affect the status of any Indian who has taken an allotment when it has been approved by the Secretary of the Interior.

Mr. MONDELL. However, it will give the Secretary of the Interior power to withhold indefinitely final patents in fee simple and enable him to deprive them of citizenship.

Mr. BURKE of South Dakota. Not at all. Mr. Speaker, because of the absence of this change in the law they can not obtain a fee simple patent until the expiration of twenty-five years and unless Congress by special act grants them that privilege. The practice has been that in such cases we have granted the privilege on the recommendation of the Secretary of the Interior.

Mr. MONDELL. Under existing law, Mr. Speaker, the Indian becomes a citizen, as interpreted by the court, when he receives his allotment. I believe I am correct in that statement.

Mr. BURKE of South Dakota. That is the holding in the Supreme Court of the United States in the case of Heff.

Mr. MONDELL. Now, under this legislation the Indian remains the ward of the Government for twenty-five years after he takes his allotment, unless in the meantime the Secretary of the Interior sees fit to make him a citizen by granting him a patent in fee simple.

Mr. BURKE of South Dakota. Except that Congress may grant that privilege if it sees fit.

Mr. CURTIS. And, further, the agreement might provide that the title should become absolute or a fee simple title should pass, say, in ten years.

Mr. MONDELL. Yes; but—

Mr. CURTIS. The main advantage of this bill is that under existing law the Supreme Court has held that after a patent has issued (the court said the word "patent" was not happily chosen to express the thought which, it is clear, all parts of the section being considered, Congress intended to express), notwithstanding the Indian does not secure a title in fee for twenty-five years, he becomes a citizen of the United States, and that the State courts have full jurisdiction over him, but not over his property.

They can not assess and tax the lands, nor can a State enact a law which will prevent the Government, at the time agreed, conveying the allottee the land in fee. Now, this bill, if enacted, will leave him under the control of the Government until he secures a patent conveying the fee, whether he gets it under an agreement or whether it is issued to him under the law by the Secretary of the Interior. The Supreme Court held that the Indians to whom allotments were made under the act of 1887 were still wards of the nation, in a condition of pupilage or dependency.

[3680] Mr. MONDELL. In other words, Mr. Speaker, this legislation retains the Indian in his condition as a ward of the nation without rights of citizenship for twenty-five years after he receives his allotment. Whereas under present conditions he becomes a citizen upon receiving his allotment. Is not that a fair statement of the situation?

Mr. CURTIS. That is true, unless, as I said a moment ago, the agreement provides that the fee should pass in a shorter time.

Mr. MONDELL. If there is some special provision in a particular piece of legislation. Generally this puts off for twenty-five years the time in which an Indian may become a citizen of the United States.

Mr. CURTIS. Yes, sir—that is, by the mere taking of an allotment.

Mr. MONDELL. I understand.

Mr. CURTIS. He may become a citizen of the United States any minute he desires by leaving the reservation and taking up a residence apart from any tribe of Indians and adopting the habits of civilized life.

Mr. MONDELL. Under this law, however, if he does accept an allotment—and of course every Indian residing on a reservation will take an allotment, or ought to do so—he can not become a citizen within twenty-five years unless the Secretary of the Interior in the meantime shall issue him a patent in fee simple.

Mr. BURKE of South Dakota. Mr. Speaker, let me say to the gentleman he does not become a citizen on taking an allotment until it is approved by the Secretary of the Interior. So the Secretary of the Interior now has it within his power to withhold citizenship; yet the Indian may take an allotment.

Mr. MONDELL. Mr. Speaker, is a point of order pending?

Mr. FINLEY. Mr. Speaker, I reserved the point of order against the bill.

Mr. BURKE of South Dakota. Mr. Speaker, I yield to the gentleman from Montana for a question.

Mr. DIXON of Montana. Mr. Speaker, I want to ask the gentleman from South Dakota [Mr. BURKE] if the purpose of the bill is not to prevent the blanket Indians by wholesale becoming citizens by allotment, and still allow the intelligent Indians on application to become citizens by allotment?

Mr. BURKE of South Dakota. That is the purpose of the law, and, further, to protect the Indians from the sale of liquor.

Mr. CURTIS. It is a very great improvement over existing law.

Mr. DIXON of Montana. I thoroughly concur.

Mr. BURKE of South Dakota. It is in accordance, in my opinion, with what the original allotment law contemplated, and what was considered to be the law until the decision of the Supreme Court last April held otherwise.

Mr. DIXON of Montana. I know a case where the reservation assumed to be open where, under the decision of the Supreme Court, there is no way on earth to prevent the wholesale sale of whisky to those allotted Indians. Under this bill it will stop the sale of it to the blanket Indians.

Mr. FINLEY. Where are the Indians located who will be affected by this bill?

Mr. BURKE of South Dakota. Mostly in the reservations of the country, if not entirely in the reservations.

Mr. FINLEY. Within all the States and Territories? What Indians?

Mr. BURKE of South Dakota. The South Dakota Indians probably more than any others. I understand the application of the present law has been held not to apply to Territories.

Mr. FINLEY. Will this bill apply to Indians in the Indian Territory?

Mr. BURKE of South Dakota. I think it would; yes, sir; though I am not sure that I am familiar with the general allotment law as to whether it applies to Indians within the Indian Territory or not.

Mr. FINLEY. In the Indian Territory?

Mr. BURKE of South Dakota. I have said I thought it would, but that I am uncertain.

Mr. FINLEY. Then to that extent it would affect the Indian Territory Indians, would it not?

Mr. BURKE of South Dakota. It would affect no Indian who had taken his allotment.

Mr. FINLEY. To what extent have the Indians in the Indian Territory not taken allotments?

Mr. BURKE of South Dakota. I will yield to the gentleman from Kansas, who is more familiar with that than I am.

Mr. CURTIS. So far as the Indian Territory is concerned, all the Indians have been made citizens of the United States, and they are citizens now. The allotments have all been made to the Seminoles; nearly all to the Creeks. They are being made to the Chickasaws, the Choctaws, and the Cherokees.

Mr. FINLEY. How many Indians in the Indian Territory have received their allotment?

Mr. CURTIS. That would be very hard to say. There are about 4,000 allotments yet to be made to the Choctaws and Chickasaws, but the patents have not been delivered to those who have been allotted in those two

tribes; nearly 7,000 patents have been delivered to members of the Cherokee tribe; nearly all patents have been delivered to the members of the Creek tribe, and allotments are complete among the Seminole tribe.

Mr. FINLEY. Would not the passage of this bill have the effect of delaying it?

Mr. CURTIS. It would not have that effect in the Indian Territory, because they were not included in the act of 1887; and the Government has made special agreements with the five tribes in the Indian Territory, and this law would in no way affect them.

Mr. FINLEY. I understood the gentleman from South Dakota to say a moment ago that it would apply to the Indians in the Indian Territory.

Mr. BURKE of South Dakota. I stated I did not know, and I yielded to the gentleman from Kansas, who did.

Mr. CURTIS. This law never applied to the Indian Territory.

Mr. FINLEY. Then I understand it does not apply to the Indians in the Indian Territory?

Mr. BURKE of South Dakota. It seems not.

Mr. KEIFER. I wish to ask the gentleman a question or two.

Mr. BURKE of South Dakota. I yield to the gentleman.

Mr. KEIFER. I want to know what there is in the bill that he has prepared that excludes it from general operation upon the Indian tribes in the Indian Territory.

Mr. BURKE of South Dakota. The gentleman from Kansas has just explained, I thought, that particular point.

Mr. KEIFER. A general law is likely to apply generally. Is there any reservation in this bill?

Mr. CURTIS. Not in this bill; this is simply an amendment to section 6 of the act of 1887. The act of

1887 excludes the Indians of the Indian Territory. Now, there is nothing in this bill bringing them within its terms. Therefore the two acts would be construed together, and under the rules of law it would be held that the original act not applying to the Indians in the Indian Territory, this act amending it would not apply to them. Now we have special agreements with the five tribes, under which allotments are being made to them. We have a bill pending, which will go to conference within a day or two, providing for final settlement of all their affairs. We have special provisions in the various agreements in regard to the sale of intoxicating liquors which have not been put in other agreements with Indians in the United States, and they have always been dealt with separately and distinctly. The agreements provide the conditions under which the deeds or patents shall be issued, which shall be subject to alienation and when they may be alienated; that homesteads shall not be disposed of for certain periods. As this bill only affects Indians with whom agreements are hereafter to be made, it can not under any circumstances apply to the members of the Five Civilized Tribes.

Mr. MONDELL. I fail to find any feature in your bill, from a hasty examination of it, that limits its provisions——

Mr. BURKE of South Dakota. Read the first line of the bill——

Mr. MONDELL (continuing). To future agreements with Indians.

Mr. CURTIS. I have heard the bill read and as I understand it, it only applies to agreements hereafter to be made.

Mr. BURKE of South Dakota. It only amends section 6 of the act of 1887.

Mr. KEIFER. The gentleman from Kansas makes a clear statement as to the existing law as to how it would apply, but the general rule is——

Mr. ADAMS of Pennsylvania. Mr. Speaker, I make the point of order that we can not hear.

The SPEAKER. The House will be in order.

Mr. BURKE of South Dakota. I yield to the gentleman from Ohio.

Mr. KEIFER. Not for any particular time. I was going to say to the gentleman from Kansas that the general rule is that a general law will repeal or supersede another general law unless there is some reservation against it, and it looks to me as though now, to avoid confusion, you better put some reservation in this bill if there is none there now.

Mr. BURKE of South Dakota. Let me state to the gentleman from Ohio that we have this proviso on the bill:

Provided further, That until the issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States.

[3601] Now, we certainly can not legislate to change the status of any citizen whose status has been fixed, and the Supreme Court in the Heff case state that we have not that right without the consent of the citizen to be affected and the consent of the State within which he resides.

Mr. KEIFER. I have no objection to that statement, but it does not cover the objection. It applies only to conditions that are already fixed; but there are cases that are to come, of applications to be made, allotments to be made in the future, and this may embarrass conditions existing in the Indian Territory; and no matter "whether there is a reservation in the act of 1887 or not, there is no reservation in this, and that is what I suggest—that the gentleman put in such a reservation. I am not opposing the bill.

Mr. CURTIS. A very few words would cover it, simply providing that the provisions of this act shall not extend to the Indians in the Indian Territory.

Mr. KEIFER. I suggest that had better be put in, so as to avoid any confusion.

Mr. FITZGERALD. I think the gentleman from Ohio entirely misunderstands this bill. The act of 1887—the general allotment act—which is known as the "Dawes Act," authorized the President to allot lands to Indians, excepting from the operations of the act the lands of the Five Civilized Tribes.

Mr. KEIFER. That has been stated over and over again; but this bill does not except from that, and that is the trouble. The gentleman comes in without having heard the discussion——

Mr. FITZGERALD. If the gentleman will wait a moment, he will find out that I not only have heard the discussion, but that I understand this, which he does not.

Mr. KEIFER. That is the gentleman's ipse dixit about it.

Mr. FITZGERALD. This bill which is now offered amends one section of the general allotment act. Does the gentleman contend that one section of that act, by being amended, repeals the reservation contained in the first part?

Mr. KEIFER. Certainly not. It does not affect that so far as it relates to the original act; but it does take the place, probably, of the act and gives a general application.

Mr. BURKE of South Dakota. I yield to the gentleman from Kansas [Mr. CURTIS] for the purpose of suggesting an amendment.

Mr. CURTIS. Mr. Speaker, I suggest the following amendment:

Provided further, That the provisions of this act shall not extend to the Five Civilized Tribes.

Mr. LACEY. In the Indian Territory.

Mr. CURTIS. In the Indian Territory.

The SPEAKER. Is there objection to the consideration of the bill?

Mr. FINLEY. One moment. I understood the gentleman from South Dakota to say as to these blanket Indians that parties could go in under the laws of the United States and sell them intoxicating liquors. Is that true?

Mr. BURKE of South Dakota. Under the decision in the Heff case, if liquor is sold to an Indian and the Indian happens to be an allottee, the person selling the liquor to him can not be prosecuted under the laws of the United States which prohibit the sale of liquor to the Indians.

Mr. FINLEY. To what extent will this bill cut off the present or prospective right of suffrage from the blanket Indians?

Mr. BURKE of South Dakota. I can only answer that question by guessing at the number of Indians who have not taken their allotments, and I have endeavored to get that information.

Mr. FINLEY. Will it cut off the right of suffrage from any of the blanket Indians?

Mr. BURKE of South Dakota. Yes; I think it will.

Mr. CURTIS. None who have it now.

Mr. BURKE of South Dakota. It will not affect any who now enjoy that privilege.

Mr. FINLEY. But it will prevent the extension of the privilege to blanket Indians in the future until such time as they receive their patents.

Mr. BURKE of South Dakota. Yes.

Mr. FINLEY. And the gentleman is of the opinion that the blanket Indians as a rule are unfit for the exercise of suffrage?

Mr. BURKE of South Dakota. I most certainly am of that opinion.

Mr. STEPHENS of Texas. In what respect will it prevent the sale of whisky on the reservations to these Indians?

Mr. BURKE of South Dakota. I do not know that it will have any particular effect, because if liquor is sold now on the reservations it is a violation of the law.

Mr. STEPHENS of Texas. I would like to ask the gentleman if he can not frame an amendment that would protect them from being sold whisky when they are at the Capitol. [Laughter.]

Mr. BURKE of South Dakota. I do not think they have any right to sell liquor here or anywhere else to the Indians. I will yield to the gentleman from Minnesota.

Mr. STEENERSON. I understand the object of this bill is to apply to those Indians who hereafter, after the passage of this proposed act, shall be allotted lands in severalty?

Mr. BURKE of South Dakota. Yes.

Mr. STEENERSON. That the mere allotment of lands to such Indians in severalty shall not operate to make them citizens within the meaning of the liquor law?

Mr. BURKE of South Dakota. That is right.

Mr. STEENERSON. It can not affect those who already enjoy the high privilege of purchasing liquor?

Mr. BURKE of South Dakota. Certainly not.

Mr. STEENERSON. I understand further that in the proviso to this bill it is provided for granting lands in fee without any restriction; that that provision is not limited. That applies to all Indians anywhere that have allotments?

Mr. BURKE of South Dakota. It does.

Mr. STEENERSON. And is operative whether allotment has already been made or will be made in the future?

Mr. BURKE of South Dakota. Yes. Now I will yield to the gentleman from Wyoming.

Mr. MONDELL. Mr. Speaker, I woud like to ask the gentleman from South Dakota in what manner this bill affects the status of Indians to whom allotments have been made at this time and who have heretofore enjoyed the privileges of citizenship?

Mr. BURKE of South Dakota. I will answer the gentleman's question by stating that it does not affect such

Indians any more than it affects the Members of this House so far as the question of citizenship is concerned.

Mr. MONDELL. Well, Mr. Speaker, that is a pretty strong statement. The Indian to whom allotment has been made has heretofore been held to be a citizen and granted the right to vote in certain localities. I do not understand that he has been allowed that privilege in all of the States. That privilege has not been exercised in the past by reason of any legislation clearly denominating him a citizen, as I understand it, but by interpretation. Now, we provide in this statute that during the trust period, which is twenty-five years, the Indian may not exercise the rights of citizenship and is not subject to the laws of the State or Territory in which he resides.

The gentleman from South Dakota is a lawyer, I believe, and I am not, but in my mind there is some question—and I want to know if that matter has been carefully considered—as to whether by any possibility this statute could affect the status of Indians who have heretofore been considered, by reason of being an allottee, entitled to the rights of citizenship.

Mr. BURKE of South Dakota. That question has been carefully considered. I think the gentleman is confused in his mind by the belief that because an Indian has the right to vote within a State that therefore he is a citizen; but a man may be a citizen of a State and not be a voter.

Mr. MONDELL. I am not confused on that point. It is true, however, that many Indians have been considered citizens, some of whom have exercised the right of franchise and some of whom have not. I simply want to be satisfied that this legislation would not affect the status of these men who have heretofore been exercising the rights of citizenship.

Mr. BURKE of South Dakota. I am positive, Mr. Speaker, that it does not.

Mr. CRUMPACKER. This bill does not affect the status of the voter. That is one of the rights of citizenship; that is fixed by the State itself. In Indiana we

allow a man to vote who is not a Citizen of the United States. An alien who has lived in the State one year, who has declared his intentions to become a citizen, can vote at all elections, but he will not be a citizen for five years; so the question of the voting status of Indians under the law as it exists can not be affected by this bill one way or the other.

Mr. MONDELL. I want to call attention to the fact that Indians have been allowed to vote on the theory that they were citizens and therefore entitled to vote.

Mr. CRUMPACKER. That is in your own State under the State law?

Mr. MONDELL. By reason of the fact of their being citizens of the United States.

Mr. CRUMPACKER. No Congress could take away a right to vote that is granted in your State by any kind of legislation that it could pass.

[3602] Mr. MONDELL. Mr. Speaker, upon the statement of the gentleman from South Dakota [Mr. BURKE] that in the opinion of the members of the committee the bill does not affect the status of Indians to whom allotments have heretofore been made, I have no objection to the legislation.

Mr. KEIFER. Mr. Speaker, the amendment offered by the gentleman from Kansas [Mr. CURTIS] I think has not been reported.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Add, at the end of the bill, the following: "*And provided further*, That the provisions of this act shall not extend to the Five Civilized Tribes."

The SPEAKER. The question is on agreeing to the amendments.

The question was taken, and the amendments were agreed to.

The SPEAKER. The question now is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time; read the third time, and passed.

On motion of Mr. BURKE of South Dakota, a motion to reconsider the last vote was laid on the table.

* * * *

CONGRESSIONAL RECORD—SENATE.

March 12

* * * *

[3668] HOUSE BILLS REFERRED

H.R. 11946. An act to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," was read twice by its title, and referred to the Committee on Indian Affairs.

* * * *

[4153] REPORTS OF COMMITTEES

* * * *

Mr. GAMBLE, from the Committee on Indian Affairs, to whom was referred the bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," reported it with amendments, and submitted a report thereon.

* * * *

[5189] ALLOTMENT OF LANDS TO INDIANS

The bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the

various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," was announced as the next business in order on the Calendar.

[5190] Mr. McCUMBER. I ask that the bill may be passed over, retaining its place on the Calendar.

The VICE-PRESIDENT. At the request of the Senator from North Dakota, the bill will go over, retaining its place on the Calendar.

* * * *

APRIL 20

[5605] ALLOTMENT OF INDIAN LANDS IN SEVERALTY

The bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," was announced as next in order on the Calendar.

Mr. KEAN. I do not see the Senator from South Dakota [Mr. GAMBLE] who reported the bill in the Chamber at this time, and so I ask that the bill go over.

The VICE-PRESIDENT. The bill will go over, at the request of the Senator from New Jersey, without prejudice.

Mr. CLAPP subsequently said: In the absence of the Senator from South Dakota [Mr. GAMBLE] I should like to have the objection withdrawn to the consideration at this time of House bill 11946. The Senator from South Dakota who has the bill in charge is very anxious to have it passed. I hope the Senator from New Jersey will withdraw his objection.

[5606] Mr. KEAN. I do not know that I shall object to the bill, but I should like to have some explanation of it before it is passed. The title would indicate that it is a

bill of some importance and one which would give rise to debate.

Mr. CLAPP. I can make a very short statement in explanation of the bill.

Mr. KEAN. I have no objection to that.

The VICE-PRESIDENT. Does the Senator from New Jersey withdraw his objection to the present consideration of the bill?

Mr. KEAN. I withdraw the objection.

Mr. CLAPP. Mr. President, under the existing allotment law, when an Indian obtains his allotment he becomes a citizen, which divests the Federal Government of all authority over the Indian, have so far as there may be retained a restriction by the Government upon alienation of the allotment by the allottee. This has led to a most deplorable condition in many of the reservations. The purpose of this bill is to provide that in their future allotments the rights of citizenship shall not attach until the expiration of the trust period and the allottee obtains his patent. It is a bill in which the Department is vitally interested and one that should become a law.

The VICE-PRESIDENT. Objection being withdrawn, the bill will be read for the information of the Senate.

The Secretary read the bill; and by unanimous consent the Senate, as in Committee of the Whole, proceeded to its consideration.

Mr. HEYBURN. I should like to ask the Senator from Minnesota a question. I understand him to state that this bill provides that Indians shall only become citizens of the United States after the lapse of the time in which they might prove upon their lands. Is that it?

Mr. CLAPP. Yes.

Mr. HEYBURN. Then here is the condition that confronts us: We have in Idaho the Nez Perce Indians, for instance, and the Coeur d'Alenes, who were provided for the other day. Some of those Indians are now in the possession of full citizenship. Would this bill prevent those

that are not already within the limits of full citizenship from completing their citizenship?

Mr. CLAPP. Yes, sir; it would.

Mr. HEYBURN. Then it would bring two classes of Indians on the same reservation?

Mr. CLAPP. Yes, sir.

Mr. HEYBURN. At 12 o'clock in the day the Indians who had before noon complied with the law and taken their lands in severalty would have one status as citizens and those who did not happen to get in at that time would be shut off from citizenship under this proposed law. It seems to me that there should be some amendment that would prevent a condition where one portion of a tribe would be citizens of the United States and occupy a position above the other portion of the tribe. That would hardly result in harmony in that tribe. It would create an aristocracy of citizenship.

I am in favor of the general principle of the bill, provided it is amended so as to avoid those embarrassments, and they would be serious embarrassments to the two tribes in the State which I in part represent here, because just now their lands are in the process of being alloted.

Mr. CLAPP. Mr. President, the condition to which the Senator refers, I think obtains to-day upon every reservation in the United States under the existing law. A portion of a tribe who have had their allotments made under the existing law advance to certain rights of citizenship. Those who have not received their allotments do not reach that point in citizenship. The trouble under the existing condition is that when they bet their first allotments, their trust deeds, they become citizens. It is true that under this bill those who have heretofore taken their allotments will have the rights of citizenship, because no law that Congress could pass could to-day divest them of the rights which they have, but the bill will for the future cure the evil that is found on these reservations, where the Indians by merely receiving their allotments pass be-

yond the jurisdiction of the Federal Government. We can not avoid the condition to which the Senator referred, because under the existing law there are two classes.

Mr. HEYBURN. I am anxious to perfect the bill rather than to defeat it. Now comes this provision at the top of page 2:

> Then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law.

There is a discrimination in that provision between Indians who live in the Territories and Indians who live in the States, which I doubt if the Senator who prepared this bill intended should exist.

Mr. CLAPP. I do not think it exists, because no State could pass such a law.

Mr. HEYBURN. Well, then, why provide, as is provided in this bill? Of course, a State can not pass such a law after the Indians do become citizens, but why provide that a Territory shall not pass any law denying the Indians within a Territory the equal protection of the law?

Mr. CLAPP. Because we are legislating now for the Territories and not for the States. A State could not take away the rights of citizenship if it wanted to. We are legislating for the Territories, and provide in this bill that no Territory shall do it.

Mr. HEYBURN. Yes; but we use the words "State or Territory" in defining the laws to which they shall be subject in line 4, on page 2.

Mr. CLAPP. No, sir; we use the words "State or Territory" in defining the rights that the Indian attains to. The bill provides:

> Every allottee shall have the benefit of and be subject to the laws, both civil and criminal——

Mr. HEYBURN. Well, he already is in a State.

Mr. CLAPP. Not unless he has got his allotment he is not.

Mr. HEYBURN. The bill says "every allottee." It has been held by the Supreme Court of the United States recently that every allottee has attained to citizenship and has those rights, of course. There was a doubt about this until a recent time, but it has been settled.

Mr. CLAPP. What would the Senator like to suggest in the way of amendment?

Mr. HEYBURN. I should like to have time to look the bill over and make a suggestion.

Mr. CLAPP. I do not wish to take up the time of the Senate with a discussion of this bill this morning.

Mr. McCUMBER. Let me call the attention of the Senator——

Mr. GALLINGER. I ask that the bill may go over.

Mr. McCUMBER. Let me call the attention of the Senator to one matter. We are simply repeating the law as it now stands with reference to the Indians, and what has been the law ever since 1887. This bill does not add to it, but, on the contrary, the exact language of the law of February 8, 1887, has been recopied into this bill; so that it will not affect the question whether it comes in again or whether it does not.

Mr. HEYBURN. I should like to ask the Senator——

Mr. GALLINGER. I ask that the bill may go over.

The VICE-PRESIDENT. Under objection, the bill will go over without prejudice.

* * * *

[5805] ALLOTMENT OF INDIAN LANDS IN SEVERALTY

The bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the

Indians, and for other purposes," was announced as next in order.

The VICE-PRESIDENT. On April 20 last the bill was considered as in Committee of the Whole, and was read.

The Senate, as in Committee of the Whole, resumed the consideration of the bill, which had been reported from the Committee on Indian Affairs with amendments.

The first amendment was, on page 3, line 2, after the word "removed," to insert "and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent;" so as to make the proviso read:

Provided, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent.

The amendment was agreed to.

The next amendment was, on page 3, line 8, to strike out the words "the Five Civilized Tribes" and insert "any Indians in the Indian Territory;" so as to make the additional proviso read:

And provided further, That the provisions of this act shall not extend to any Indians in the Indian Territory.

The amendment was agreed to.

Mr. CLAPP. I desire to offer an amendment to the bill.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. Add at the end of the bill the following:

That hereafter when an allotment of land is made to any Indian, and any such Indian dies before the expira-

tion of the trust period, said allotment shall be canceled and the land shall revert to the United States, and the Secretary of the Interior shall ascertain the legal heirs of such Indian and shall cause to be issued to said heirs and in their names a patent in fee simple for said land, or he may cause the land to be sold as provided by law and issue a patent therefor to the purchaser or purchasers and pay the net proceeds to the heirs, or their legal representatives, of such deceased Indian. The action of the Secretary of the Interior in determining the legal heirs of any deceased Indian, as provided herein, shall in all respects be conclusive and final.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

• • • •

CONGRESSIONAL RECORD—HOUSE

April 27

• • • •

[5980] ALLOTMENT OF LANDS TO INDIANS

The SPEAKER laid before the House the bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians of the various reservations and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," with Senate amendments.

The Senate amendments were read.

Mr. SHERMAN. Mr. Speaker, I move that the House concur in the Senate amendments.

The motion was agreed to.

On motion of Mr. SHERMAN, a motion to reconsider the last vote was laid on the table.

• • • •

[6089] ENROLLED BILLS SIGNED

H.R. 11946. An act to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians and for other purposes;"

• • • •

CONGRESSIONAL RECORD—SENATE

April 30

[6100] ENROLLED BILLS SIGNED

H.R. 11946. An act to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes;" and

• • • •

CONGRESSIONAL RECORD—HOUSE

• • • •

[6233] H.R. 11946. An act to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservaions, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."

• • • •

[7795] MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

A message, in writing, from the President of the United States was communicated to the House of Representatives by Mr. BARNES, one of his secretaries, who also informed the House of Representatives that the President had approved and signed bills of the following titles:

On May 8, 1906;

H.R. 11946. An act to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."

* * * *

HOUSE OF REPRESENTATIVES

59th Congress, 1st Session — Report No. 1558

ALLOTMENT OF LANDS IN SEVERALTY TO CERTAIN INDIANS

February 21, 1906.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BURKE, of South Dakota, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H.R. 11946]

The committee on Indian Affairs, to whom was referred House bill 11946, submit the following report:

The committee have amended the bill and, as amended, recommend that it do pass.

The amendments adopted are as follows:

In line 9, page 1, after the word "of," strike out the words "twenty-five years or," and strike out all of line 10, and insert in lieu thereof the words "the trust period."

In line 1, page 3, after the word "time," insert the word "to."

In line 4, page 3, after the word "removed," add an additional proviso, as follows:

Provided further, That until the issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States.

This bill proposes to amend the general Indian allotment law of 1887, and changes section 6 of said act so that hereafter, whenever an allotment of land is made to any Indian, citizenship will be withheld from such Indian during the trust period. It has generally been supposed that where Indians had taken allotments under the general allotting law that they were still wards of the nation and subject to the jurisdiction only of the United States, and in cases where persons were prosecuted for selling liquor to Indians the courts assumed jurisdiction, regardless of whether the Indians had taken an allotment or not, but upon April 10, 1905, the Supreme Court of the United States decided otherwise in a case entitled "Matter of Heff," reported in 197 U.S. Reports, page 488, the opinion of the court being by Mr. Justice Brewer.

In that case Heff was convicted in the district court of the United States in the district of Kansas, under an indictment for having sold certain intoxicating liquor to an Indian and a ward of the Government; upon conviction he was sentenced to imprisonment for a period of four months and to pay a fine of $200 and the costs of the prosecution. He appealed, and the court of appeals of the eighth circuit sustained the decision of the district court, and he presented an application for a writ of habeas corpus to the Supreme Court. In effect the court holds that under the law, when an Indian takes an allotment, that he then becomes a citizen of the State or Territory in which he may reside and subject to the laws thereof, and is no longer a ward of the nation, subject to the police regulations on the part of Congress. In concluding the opinion the court says:

We are of the opinion that when the United States grants the privileges of citizenship to an Indian, gives to him the benefit of and requires him to be subject to the laws, both civil and criminal of the State, it places him outside the reach of police regulations on the part of Congress; that the emancipation from federal control thus created can not be set aside at the instance of the Government without the consent of the individual Indian and the State, and that this emancipation from Federal control is not affected by the fact that the lands it has granted to the Indian are granted subject to a condition against alienation and encumbrance, or the further fact that it guarantees to him an interest in tribal or other property.

The district court of Kansas did not have jurisdiction of the offense charged, and therefore the petitioner is entitled to his discharge from imprisonment.

Mr. Justice Harlan dissented.

Since this decision was rendered there has been more or less demoralization among the Indians, as most of them have taken allotments and liquor has been sold to them, regardless of the fact that they are Indians, and in the opinion of this committee it is advisable that all Indians who may hereafter take allotments be not granted citizenship during the trust period, and that they shall be subject to the exclusive jurisdiction of the United States.

The bill also provides and authorizes the Secretary of the Interior, in his discretion, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her own affairs, may cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, encumbrance, or taxation of said land shall be removed, and if that should be done it would follow as a matter of course, under the provisions of this bill, that the allottee would then become a full citizen and

no longer subject to the exclusive jurisdiction of the United States.

In the opinion of the committee this provision is advisable, as it will make it unnecessary for legislation granting fee-simple patents to individual Indian allottees, as has been done in every session of Congress for several years, and it places the responsibility upon the Secretary of the Interior and the Indian Department, who know best when an Indian has reached such a stage of civilization as to be able and capable of managing his own affairs.

The bill is recommended very strongly by the Commissioner of Indian Affairs and the Secretary of the Interior, and the reports are herewith submitted and are as follows:

DEPARTMENT OF THE INTERIOR,

Washington, February 14, 1906.

Sir: I am in receipt of your letter of the 16th ultimo, inclosing H.R. 11946, being "A bill to amend section six of an act approved February eighth, eighteen hundred and eighty-seven, entitled 'An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," and in reply to your request for a report I inclose herewith copy af a letter from the Commissioner of Indian Affairs, dated the 8th instant, in which he suggests several amendments, and says that "if the bill is clarified by the amendments suggested there appears to be no good ground for objecting to it. The provision for fee-simple patents is especially desirable legislation, and is in harmony with the spirit of our law, while the present method of granting individual Indian citizens the control of their real estate by special enactment is tolerable only in the absence of any other possible method."

The views expressed by the Commissioner of Indian Affairs and the amendments suggested meet with my approval, and the passage of the bill is recommended.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

The CHAIRMAN OF THE COMMITTEE ON INDIAN AFFAIRS,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,

Washington, February 8, 1906.

SIR: I have the honor to acknowledge the receipt, by your reference of January 18, 1906, for report, of a letter from Hon. J. S. Sherman, chairman of the Committee on Indian Affairs, House of Representatives, who inclose a copy of H. R. 11946, entitled "A bill to amend section 6 of an act approved February 8, 1887, entitled 'An act to provide for the allotment of lands in severalty to Indians on the various reservations and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.' "

It changes section 6 to read as follows:

"That at the expiration of twenty-five years or thereafter, if the period has been extended by the President, and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside, and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits

of the United States to whom allotments shall have been made, and who has received a patent in fee simple under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States, who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizen, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property: *Provided*, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs, at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed."

The act of February 8, 1887 (24 Stat., 388), known as the general-allotment act, provides that after approval of allotments the Secretary of the Interior "shall cause patents to issue therefor in the names of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotment shall have been made or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case, in his discretion, extend the period." * * *

Section 6 makes every Indian allottee under the act subject to the laws, both civil and criminal, of the State or Territory in which he may reside, immediately upon the issuance of a trust patent, and declares every Indian born within the United States, to whom an allotment shall have been made under any law or treaty, to be a citizen of the United States.

The bill under consideration postpones the time when an allottee taking lands after it is enacted is to become subject to the laws of the State or Territory of his residence and when citizenship is to be acquired until the issuance of the final or fee-simple patent—a period of twenty-five years, which may be indefinitely extended by the President.

Experience has demonstrated that citizenship has been a disadvantage to many Indians. They are not fitted for its duties or able to take advantage of its benefits. Many causes operate to their detriment. Some communities are too indifferent and others are financially unable to enforce the local laws where Indians are involved. The result is that the newly enfranchised people are free from any restraining influences. Degraded by unprincipled whites, who cater to their weaknesses, no protection is given them, because the United States courts have no jurisdiction and the local authorities do not enforce State laws.

The bill goes further, and makes ample provision to meet all cases where it would be for the best interest of the allottees to make citizens of them. It authorizes the Secretary of the Interior, in his discretion, "whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her own affairs, at any time cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed."

This provision is perhaps the most important in the bill. It is a long step in the right direction, and the great

need of such a provision is apparent under existing law, and it would become all the more urgent if the other provisions of the pending bill should be enacted. There are many members of Indian tribes, full bloods, mixed bloods, and in some instances adopted white men, who are entirely competent to transact their own business and to take their places in the ranks of our common citizenship. If such allottees are given full control of their property they will be absorbed into the community in which they reside and bear their share of its burdens, while at the same time the number of "wards of the Government" will be gradually reduced. The process, however, is well safeguarded. Before a fee-simple patent is issued the bill makes it the duty of the Secretary of the Interior to satisfy himself of the civic competency of the allottee concerned. Through superintendents, agents, inspectors, and other officers the Secretary can make a thorough investigation of each case and take only such action as the facts may warrant.

In the past the Indian Office has made many recommendations for special legislation authorizing you to gratify the aspirations of individual Indians for citizenship by issuing to them patents in fee for their lands; but as a fundamental principle of good government, special legislation should be avoided and both the Department and members of Congress relieved of the importunities of interested parties for enactment designed to benefit only themselves.

The proposed amendment will not only substitute general for special legislation, but for those allottees who are not fitted for the responsibilities of citizenship it will provide a probationary period during which any who have both the ability and the ambition may prepare themselves for the desired change.

It may be argued that the bill leaves in some doubt the status of those Indians who will be allotted after it becomes law. In cases where the surplus lands are re-

tained and the reservation boundaries kept intact the allottees would doubtless continue wards of the Government and be subject only to the laws of the United States; whereas if the surplus lands be opened to settlement and the reservation substantially abolished, the question of jurisdiction might become a serious one. It would therefore, perhaps, be well to add the following proviso:

"*Provided further*, That until the issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States."

The first part of amended section 6 will not make allottees subject to the laws of the State in which they reside in any case until the expiration of twenty-five years. The proviso to that section contemplates the shortening of the trust period and removes all restrictions as to the sale, incumbrance, or taxation on the issuance of a fee-simple patent. A previous provision of the section makes such patentees citizens of the United States. Although it would probably be held that a person who becomes a citizen of the United States thereby becomes subject to the laws of the State of which he is a resident. I think it would be wiser to remove all doubt by amending the first section by striking out the words "twenty-five years or thereafter, if the period has been extended by the President," and insert in lieu thereof the words "the trust period." Line 1, on page 3, also should have the word "to" inserted after the word "time."

If the bill is clarified by the amendments suggested there appears to be no ground for objecting to it. The provision for fee-simple patents is especially desirable legislation and is in harmony with the spirit of our law, while the present method of granting individual Indian citizens the control of their real estate by special enactment is tolerable only in the absence of any other possible

method. It is therefore most heartily recommended that this bill receive your approval.

Very respectfully,

F. E. LEUPP, *Commissioner.*

The SECRETARY OF THE INTERIOR.

59th Congress
1st Session

Report
No. 1998

SENATE

ALLOTMENT OF LANDS IN SEVERALTY TO CERTAIN INDIANS

MARCH 23, 1906.—Ordered to be printed.

Mr. GAMBLE, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H.R. 11946.]

The Committee on Indian Affairs, to whom was referred the bill (H.R. 11946) to amend section 6 of an act approved February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," report the same and recommend that the same do pass with the following amendments:

On page 3, in line 4, after the word "removed," insert the following "and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent."

On page 3, in lines 8 and 9, strike out the following: "Five Civilized Tribes," and insert in lieu thereof the following: "any Indians in the Indian Territory."

[Balance of Report same as H. Rep. No. 1558, *supra.*]

[EMBLEM]

THE SECRETARY OF THE INTERIOR

Washington

May 8, 1990

Honorable George S. Mickelson
Governor of South Dakota
Pierre, South Dakota 57501

Dear Governor Mickelson:

I am sorry it has taken me so long to answer your letter of March 28, 1990, regarding the lawsuit the United States plans to file against South Dakota and Todd County to prevent further taxation of Indian-owned fee lands on the Rosebud Reservation.

As you know, this issue is very contentious. Thus, before I responded I wanted to be sure I understood all the legal implications. My research indicates that two state courts have ruled that such lands are exempt from state taxation. An opinion from our Associate Solicitor, Division of Indian Affairs, reaches the same conclusion. On the other hand, state and county taxing officials in Washington, Montana and Wyoming support the position you are taking in South Dakota. Also supporting your position is the recent opinion from the Ninth Circuit in the case involving the Yakima Tribe in Washington. The United States has filed a brief in that case supporting the Tribe's petition for a rehearing.

You have requested that I reverse the decision of the Solicitor to ask the Justice Department to file suit against South Dakota and Todd County. Governor, I believe that this issue cries out for clarification, and it would be best to let the courts decide this issue once and for all. I believe that sooner or later it will end up in the

Supreme Court and we might as well settle it sooner rather than later. For that reason I believe we should proceed with the litigation.

Thank you for your interest in this matter.

Sincerely,

/s/ Manuel Lujan, Jr.